

**Omni Convalescent Center and Local 79, Service
Employees International Union, AFL-CIO.
Case 7-CA-33937**

March 26, 1993

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH**

Upon a charge filed by the Union on November 19, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Omni Convalescent Center, the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 22, 1993, the General Counsel filed a Motion for Default Judgment. On February 25, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Default Judgment disclose that by letter dated January 25, 1993, counsel for the General Counsel notified the Respondent that unless an answer was received by February 8, 1993, a Motion for Default Judgment would be filed. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Detroit, Michigan, has been engaged in the operation of a nursing home providing in-

patient medical and professional care services for the elderly. During the calendar year 1992, a representative period, the Respondent, in the conduct of its business operations, derived gross revenues in excess of \$100,000 and, during the same period, purchased and received at its Detroit facility supplies and materials valued in excess of \$5000 directly from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all times since 1982, the Union, by virtue of Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit and has, since then, been recognized as such by the Respondent in successive collective-bargaining agreements, the most recent of which was effective from October 1, 1991, to October 1, 1992, and continued day to day thereafter to the present. The appropriate bargaining unit consists of:

All full-time and regular part-time employees employed by Omni Convalescent Center as nursing assistants, cooks, food service workers, cook's helpers, housekeepers, maintenance, laundry and utility workers, but excluding registered and licensed practical nurses, technical employees, physical therapists, administrative and executive personnel, office clerical employees and guards, supervisors and professional employees as defined in the Act.

Article II, sections 1 and 2 of the parties' current collective-bargaining agreement provides for dues checkoff for employees in the bargaining unit. From May 1992 to the present, the Respondent, through its administrator, Geraldine Reibant,¹ has unilaterally failed and refused to timely remit to the Union the dues withheld from employees' base wages as required by article II, sections 1 and 2 of the agreement. The above relate to employees' wages, hours, and other terms and conditions of employment and involve mandatory subjects of bargaining. We find that by engaging in such conduct, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union within the meaning of Section 8(d), and has violated Section 8(a)(5) and (1) of the Act, as alleged.

¹ The complaint alleges, and we find, that Reibant is a supervisor and agent of the Respondent within the meaning of Sec. 2(11) and 2(13) of the Act.

Conclusion of Law

By failing and refusing to timely remit to the Union the dues withheld from the unit employees' base wages, as required by article II, sections 1 and 2 of its agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to comply with article II, sections 1 and 2 of its agreement with the Union by remitting to the Union the dues that were withheld from the unit employees' base wages and which have not been remitted since May 1992, with interest on such amounts to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Omni Convalescent Center, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 79, Service Employees International Union, AFL-CIO, which is the designated exclusive bargaining representative of the Respondent's employees in an appropriate unit, by refusing to timely remit to the Union dues that were withheld from the base wages of unit employees, as required by article II, sections 1 and 2 of its collective-bargaining agreement with the Union. The appropriate bargaining unit consists of:

All full-time and regular part-time employees employed by Omni Convalescent Center as nursing assistants, cooks, food service workers, cook's helpers, housekeepers, maintenance, laundry and utility workers, but excluding registered and licensed practical nurses, technical employees, physical therapists, administrative and executive personnel, office clerical employees and guards, supervisors and professional employees as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union the dues that were deducted from the unit employees' base wages and which have not been remitted since May 1992, with interest as described in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 79, Service Employees International Union, AFL-CIO, which is the designated exclusive bargaining representative of our employees in an appropriate unit, by failing to timely remit to the Union the dues that were withheld from unit employees' base wages, as required by article II, sections 1 and 2 of our collective-bargaining agreement with the Union. The appropriate bargaining unit consists of:

All full-time and regular part-time employees employed by Omni Convalescent Center as nursing assistants, cooks, food service workers, cook's helpers, housekeepers, maintenance, laundry and utility workers, but excluding registered and licensed practical nurses, technical employees, physical therapists, administrative and executive

personnel, office clerical employees and guards, supervisors and professional employees as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union the dues that were withheld from the base wages of unit employees and which have not been remitted since May 1992, with interest.

OMNI CONVALESCENT CENTER